STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION OF BURLINGTON RESOURCES OIL AND GAS COMPANY FOR COMPULSORY POOLING AND A NON-STANDARD GAS PRORATION AND SPACING UNIT FOR ITS SCOTT WELL NO. 24 (SECTION 9, T31N, R10W) SAN JUAN COUNTY, NEW MEXICO	**CASE NO. 11808** **Order R-10877**
IN THE MATTER OF THE APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING, AN UNORTHODOX GAS WELL LOCATION AND NON-STANDARD GAS PRORATION AND SPACING UNIT FOR ITS MARCOTTE WELL NO. 2 (SECTION 8, T31N, R10W) SAN JUAN COUNTY, NEW MEXICO	**CASE NO. 11809** **Order R-10878**

TIMOTHY B. JOHNSON, TRUSTEE ET AL. AND MOORE'S REPLY TO BURLINGTON RESOURCES OIL AND GAS COMPANY'S RESPONSE IN OPPOSITION TO MOTIONS TO STAY

Burlington Resources Oil and Gas Company's ("Burlington") Responses to the Motions to Stay in these proceedings are confusing at best and gobbledygook at worst. There are unrefutted fundamental reasons why Orders R-10877 and R-10878 directing compulsory pooling of interests in entire sections (Section 9, T31N, R10W and Section 8, T31N, R10W) for deep Pennsylvania test wells by Burlington must be stayed. Those pooling orders rest on the shakey foundation of the June 5, 1997 Commission Order R-10815 changing Division Rule 104 to specify 640 acre proration units for such wildcat tests rather than 160 acre units.

I.

ARGUMENT AND AUTHORITIES

POINT ONE: THE CHANGED 160-ACRE SPACING RULE IS DOOMED AS TO THE GLA-66 OWNERS AND UNDER ATTACK AS TO ALL OTHERS

A. Order R-1085 will not Apply to the GLA-66 Owners Constituting Over 60% Interest in Section 9

Burlington's Response makes the statement that "In the unlikely event that the GLA-66 Group prevails and Section 9 is ultimately spaced on 160-acres and 640-acres, then the GLA-66 Group will have shared in production under 640-acre spacing to which they were not entitled and they can reimburse the appropriate owners in this section." Response, pp. 9-10. Setting aside the fanciful accounting notion of that sentence, what is absurd is the statement that the GLA-66 Group is "unlikely" to prevail. The exact opposite is true. Judge Caton has already held,

> Knowing of its plan to pool the interests of the plaintiffs for a wildcat well on 640-acre spacing and knowing the identities and whereabouts of the plaintiffs, Burlington's failure to provide notice to them of the spacing case proceeding underlying Order R-10815 was a denial of due process under the United States and New Mexico constitution. (Order, October 27, 1997 Johnson et al. v. Burlington Resources Oil and Gas Company and the New Mexico Oil Conservation Commission, Cause No. CV-97-572-3).

What is highly unlikely is that the GLA-66 Group will not prevail. At a minimum, the owners of a 2,480-acre federal lease in the core area of Burlington's deep test drilling will be subject to 160-acre spacing while other owners are subject to 640-acre spacing. This creates a wholly unworkable situation which is not explained away by Burlington's flippant references to "carrying" the GLA-66 Group interest or to "dual accounting." Response, p. 9.

B. Order R-10815 is Under Challenge on the Merits

Totally ignored by Burlington is the pending judicial review of the infirm evidentiary record in support of the 640-acre spacing change. Order R-10815 established a proration unit without any evidence that 640-acres is the area that can be efficiently and economically drained and developed by one well in the Pennsylvanian formations within the San Juan Basin. See Section 70-2-17.B. NMSA 1978. The court challenge before Judge Byron Caton can and should result in the set aside of Order R-10815 in its entirety. Until this judicial review is complete owners' rights in leases and underlying reserves in entire sections should not be impacted by compulsory pooling on a 640-acre basis.

POINT TWO: BURLINGTON HAS VIOLATED THE LAW AND ORDERS R-10877 AND R-10878 IN TENDERING PARTICIPATION IN THE WELLS

The Oil and Gas Act says that in the case of the Division issuing a pooling order the "charge for risk shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' prorata share of the cost of drilling and completing the well." Section 70-2-17C. second paragraph. NMSA 1978. The two pooling orders under review here direct that the risk charge for non-consenting working interest owners shall be 200 percent of the well costs. Order R-10877 Paragraph (32) p. 9 and decreetal Paragraph (7)(A) p. 12; Order R-10878 Paragraph (32) p. 9 and decreetal Paragraph (7)(A) p. 11.

The two pooling orders directed "After the effective date of this order, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs." Order R-10878 decreetal Paragraph (3), p. 10; Order R-10877 decreetal Paragraph (3), p. 11. In the case of the

Marcotte #2 which began drilling on June 25, 1997, Burlington was approximately seventy-five days into the drilling and completion of that well when the participation letters went out. Common industry practice is for the operator to generate a daily drilling report which, along with description of work activity, carries forward the cumulative expenditure on the well day by day.

So does Burlington prepare a revised Joint Operating Agreement with the authorized risk factor for nonconsenting owners and send that to them? So does Burlington with the Marcotte #2 well now drilled and either completed or in final stages of completion[1] a current itemized schedule of estimated well costs so an informed decision can be made? The answer is a flat "No" to both questions. On September 15, 1997 Burlington sends a letter to the Moore trusts stating that if they elect to participate they are to address an Authority for Expenditure with estimated well costs prepared on February 20, 1997, and that they are to execute the Operating Agreement sent out in April 1997 which provides a 400% risk penalty for nonconsent owners.[2]

When this circumstance is raised by the Moore's Motion to Stay, Burlington allows that the Division order controls all and the owners should "simply ignor[e] Burlington. . . Anything else is extraneous." Response, pp. 10-11.[3] How is a working interest owner to make an election not knowing whether to believe or "ignore" what Burlington sends out? How is a working interest owner to make an election on a

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[1] At the hearing in these cases on July 10, 1997. Burlington's engineer Kurt A. Shipley testified that the Marcotte #2 was commenced drilling on June 25, 1997 and would be completed in 60 days. Tr. 185.

[2] A copy of the letter from Burlington's James R. I. Strickler is found as Exhibit "D" to the Moore's Application for De Novo Hearing filed herein.

[3] How hollow rings this argument coming from a ubiquitous Division practitioner who argues in Cases 6987 and 11292 pending before the Division that statutory unitization Order R-6447 prescribing a nonconsent election for nonoperators does not control over the terms of the Unit Operating Agreement.

February 1997 cost estimate ($2.3 million to drill and complete) when it is common knowledge in Farmington that Burlington is still struggling with completion of the Marcotte #2 and the cost is probably double the estimate.

"Consent" or "nonconsent" requires knowledge on which to make a decision. Burlington's entire approach to the change in the spacing rule in Case No. 11745 and to the instant pooling cases has been marked by secrecy, misrepresentation and lack of candor both as to the Division, this Commission and the working interest owners whose property it is intent on confiscating.

CONCLUSION

Pooling Orders R-10877 and R-10878 should be stayed while and until the Commission hears Cases Nos. 11808 and 11809 de novo and becomes fully informed and until the status of Order R-10815 is fully adjudicated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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